

UNITED NATIONS
General Assembly

FORTY-EIGHTH SESSION

Official Records

SIXTH COMMITTEE
3rd meeting
held on
Monday, 4 October 1993
at 3 p.m.
New York

SUMMARY RECORD OF THE 3rd MEETING

Chairman: Mrs. FLORES (Uruguay)
later: Mr. NEUHAUS (Australia)

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Distr. GENERAL
A/C.6/48/SR.3
27 October 1993
ENGLISH
ORIGINAL: FRENCH

The meeting was called to order at 3.20 p.m.

AGENDA ITEM 144: REPORT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW ON THE WORK OF ITS TWENTY-SIXTH SESSION (A/48/17 and 296)

1. Mr. MOHAMMED (Chairman of the United Nations Commission on International Trade Law) said that UNCITRAL had devoted a major part of its twenty-sixth session to consideration of the Model Law on Procurement of Goods and Construction submitted to it by the Working Group on the New International Economic Order. That draft in many ways met the objectives which had led to its formulation. Its basic premise was that open public tendering was the preferred method of procurement. However, four other methods of procurement were permitted where tendering might be inappropriate. In order to promote transparency and accountability in the procurement process, the draft provided that a record be kept of the proceedings, except where disclosure would be contrary to the public interest. To encourage competition, procurement would be open to all suppliers or contractors without discrimination on the basis of nationality except where the reviewing authority considered that the interests of its nationals would be damaged. The draft also contained provisions making possible appeals against the actions of the procuring entity.

2. The draft had already been received with interest in a number of countries, especially those whose economies were in transition. To facilitate its adaptation to national legal systems, UNCITRAL had also adopted, at the last session, a draft guide to incorporating it into domestic law. The Model Law dealt only with the procurement of goods and construction because the Working Group had decided to postpone the preparation of model provisions on the procurement of services in view of their different character. However, having finalized work on the procurement of goods and construction, the Commission had decided to proceed with the formulation of model legislative provisions on the procurement of services. It was hoped that the Working Group would be able to finalize its work on the procurement of services and present draft provisions to the Commission at its next session for consideration and adoption. With the completion of that task, UNCITRAL would have presented a comprehensive set of model provisions on procurement of goods, construction or services.

3. In conformity with past practice, the Commission had also received reports from the Working Groups and the Secretariat on other projects in progress. The Working Group on Electronic Data Interchange had been entrusted with the preparation of legal rules on electronic data interchange (EDI). UNCITRAL had noted that the Working Group had begun to discuss the content of a uniform law on EDI and had reaffirmed its decision to postpone consideration of preparation of a model interchange agreement until other organizations now preparing such model provisions had finalized their work.

4. The Commission had also had before it the report on the eighteenth and nineteenth sessions of the Working Group on International Contract Practices. While expressing its appreciation of the work already done on a complex topic, the Commission had also considered that the progress made by the Working Group had been slow. It had requested the Working Group to consider ways in which it might expedite its work with the aim of presenting a final text to the Commission at its twenty-eighth session.

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(Mr. Mohammed)

5. The Commission had also noted with pleasure that the first two publications under the system of collection of Case Law on UNCITRAL Texts (CLOUT) had been issued. The system would be of great benefit to practitioners and assist in the promotion of uniform interpretation of those texts and in improving the quality of teaching of international trade law.

6. UNCITRAL had reviewed the status of the legal texts it had prepared. It had been pleased to note that Bangladesh, Barbados and Turkey had acceded to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards and that Slovenia had deposited an instrument of succession to the accession by former Yugoslavia to the Convention. It had also noted with pleasure that the Slovak Republic had deposited an instrument of succession to the ratification by former Czechoslovakia of the United Nations Sales Convention and the signature by former Czechoslovakia of the Hamburg Rules. Subsequently, Austria had also deposited an instrument of ratification of the Hamburg Rules. The Commission had also been pleased to note that Mexico had acceded to its Bills and Notes Convention and that legislation based on its Arbitration Model Law had been enacted by Peru and Tunisia. Subsequently, the Russian Federation and Mexico had also adopted legislation based on the Arbitration Model Law, Estonia had submitted an instrument of ratification to the United Nations Sales Convention and Ukraine had submitted an instrument of ratification of the Limitation Period Convention.

7. The Commission had expressed its concern about an anomalous situation that had arisen in the law regarding the transport of goods by sea. After the entry into force of the Hamburg Rules on 1 November 1992, that regime coexisted with the liability regimes based on The Hague Rules of 1924. The applicable regime therefore depended on whether or not the goods had been loaded or discharged in a State party to the Hamburg Rules or whether or not the transport document had been issued in such a State. That undesirable diversity in liability regimes impeded harmonization of law in that area and created obstacles to international trade. As The Hague Rules were now out of date, it would be desirable to promote unification on the basis of the Hamburg Rules, which the General Assembly could further by adopting a resolution urging States to ratify and apply the Hamburg Rules.

8. The Commission had been pleased to note that the Secretariat had expanded its programme of training and technical assistance. The Fifth UNCITRAL Symposium on International Trade Law had been held with the participation of 20 persons from African countries who had received financial assistance for that purpose from the UNCITRAL Trust Fund for Symposia. A series of national seminars had also been organized in the course of the past year in a number of countries (Thailand, Indonesia, Pakistan, Sri Lanka, Bangladesh, Ukraine, Poland and Slovenia). The Secretariat was intensifying its efforts to organize more such seminars especially for developing countries.

9. There had been an increase in requests for technical assistance from individual countries and regional organizations in modernizing their trade laws in the light of the increase in international trade. As there was no provision in the regular budget for travel of participants and lecturers, such expenses had to be met from the Trust Fund for Symposia, although contributions to the Trust Fund had diminished. The Commission wished to express its appreciation to

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(Mr. Mohammed)

all those States which had contributed to the Trust Fund. It would, however, appeal for more countries to consider making contributions to enable the Secretariat to meet the increased need for technical assistance especially in developing countries and in newly independent States.

10. One of the aims of the UNCITRAL Congress on International Trade Law held from 18 to 22 May 1992 had been to provide participants with a forum in which to voice their practical needs as a basis for future work by the Commission and other formulating agencies. At the current session, the Commission had before it the proposals for future work made at the Congress. The Secretariat had prepared introductory notes on some of the suggested topics and, after deliberating on them, the Commission had decided to undertake the preparation of guidelines for pre-hearing conferences in arbitral proceedings.

11. With regard to assignment of claims and cross-border insolvency, the Commission had decided, before taking a decision, to request a feasibility study on unification in that area. As to legal issues in privatization, it had considered that the policies for implementing privatization differed considerably between States and consequently that national laws in enactment of those policies did not lend themselves to unification. The matter could, however, be reconsidered should further developments in the field so warrant. The Commission had also noted with appreciation that the Secretariat was monitoring the work of the United Nations Industrial Development Organization (UNIDO) on the Build, Operate and Transfer (BOT) project-financing mechanism so that it could prepare an introductory note for the Commission on that subject.

12. The Commission was pleased to note that the General Assembly had requested the Fifth Committee to continue its consideration of the question of travel assistance for delegations from developing countries participating in the Commission's work. The Commission had also been requested to continue rationalization of its methods of work with a view to providing savings for delegations. After considering the matter, the Commission had concluded that the holding of consecutive meetings for its working groups was impracticable, and furthermore that it would not result in savings on travel costs for Secretariat staff. The practice of holding consecutive working group meetings could even be detrimental to the Commission's work because States might be encouraged to assign the same experts to consecutive meetings of a working group even if those experts were not the most competent in the area concerned. In that connection, he fully agreed with the Secretary-General's recommendation in document A/48/296 that the General Assembly should decide on that matter at its current session.

13. Mr. STRAUSS (Canada) said that the twenty-fifth and twenty-sixth sessions of the Commission had been especially productive. After the adoption at its twenty-fifth session of the Model Law on International Credit Transfers, the Commission had adopted at its twenty-sixth session the UNCITRAL Model Law on Procurement of Goods and Construction and the draft Guide to Enactment of the Model Law on Procurement. His country hoped that the Committee would recommend to the General Assembly the adoption at the current session of a resolution urging States to enact legislation based on the Model Law.

(Mr. Strauss, Canada)

14. At its twenty-sixth session, the Commission had decided to accord priority to the elaboration of a draft model law on procurement of services, a task assigned to the Working Group on the New International Economic Order. He wished to point out that rules for procurement of services were currently part of the GATT negotiations, in the context of the Uruguay Round. Contrary to the views of the majority of delegations, but supported by several industrialized and developing countries, his delegation had expressed its reservations about the fact that the Commission was elaborating such a model law before the work in GATT on that matter was completed. In his view, international organizations should neither work at cross purposes nor duplicate each other's work. Any UNCITRAL model provisions on procurement of services should be made subject to the treaty obligations of States, including those emerging from the Uruguay Round, as had been done with the Model Law on Procurement of Goods and Construction.

15. His delegation noted that work on the preparation of a draft convention on stand-by letters of credit and independent guarantees was proceeding apace under the firm leadership of the Canadian Chairman of the Working Group on International Contract Practices. In his view, that work as well as work on the preparation of legal rules for the use of electronic data interchange in international trade was very important for the harmonization and unification of international trade law.

16. He noted with satisfaction that new States had acceded to the United Nations Convention on International Bills of Exchange and International Promissory Notes and to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, and that ten States had thus far adopted legislation based on the UNCITRAL Model Law on International Commercial Arbitration. His delegation looked forward to an increase in their number in the future; it also looked forward to the publication of the UNCITRAL Legal Guide on International Countertrade Transactions.

17. The United Nations Convention on Contracts for the International Sale of Goods was in force throughout Canada and consultations were being held with regard to the Convention on the Limitation Period in the International Sale of Goods. In addition, consultations were continuing in Canada on the United Nations Convention on the Liability of Operators of Transport Terminals in International Trade.

18. In respect of the carriage of goods by sea, the Canadian Parliament had enacted new legislation which gave immediate effect to The Hague Rules and would enable Canada to implement the Hamburg Rules in due course.

19. At its previous session, the General Assembly had recommended that UNCITRAL should consider the possibility of holding consecutive meetings of its working groups. The Commission was attempting to comply with that recommendation. However, his delegation did not think that holding consecutive meetings of working groups was a solution to any perceived problems in the organization of the Commission's work. Consecutive meetings might even be counterproductive. Those meetings already scheduled for November and December 1993 and February and March 1994 would provide an opportunity to assess the efficacy of the system. At its next session, the Sixth Committee would then be in a position to evaluate

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(Mr. Strauss, Canada)

the results of those consecutive meetings, bearing in mind the Commission's own assessment of the question.

20. Training and assistance activities were a very important function of UNCITRAL. His country considered that through the participation of lawyers from developing States, the seminars and symposia contributed to the understanding and promotion of international trade law. For that reason, Canada had for the past five years made annual financial contributions to the UNCITRAL Trust Fund for Symposia, which helped cover travel expenses for young lawyers from developing countries.

21. The case law on UNCITRAL texts would be a very useful tool in the harmonization of international trade law because it would promote a more uniform interpretation of conventions and model laws by national courts. It was therefore in the interest of all States that were parties to the United Nations Convention on Contracts for the International Sale of Goods (United Nations Sales Convention) or that had enacted legislation based on the UNCITRAL Model Law on International Commercial Arbitration to ensure that abstracts of the decisions taken by their courts were sent to the UNCITRAL secretariat, as Canada had already done.

22. Mr. HAPFNER (Austria) said that the Commission was making a substantial contribution to harmonizing international trade law and hence to promoting international trade by removing obstacles to it, particularly legal uncertainties and unpredictable legal decisions.

23. His country, which had just enacted a law on government procurement, also attached great importance to the elaboration of international regulations aimed at liberalizing procurement. His delegation had therefore participated actively in the elaboration of the UNCITRAL Model Law on Procurement of Goods and Construction, adopted by the Commission at its twenty-sixth session, and accompanied by the draft Guide to Enactment of the Model Law on Procurement.

24. With regard to complementing the Model Law by drawing up model regulations on the procurement of services, his delegation stressed the necessity of taking into account the current work of GATT in that area in order to avoid any risk of incompatibility between the two drafts.

25. As for the preparation of general regulations governing electronic data interchange (EDI), his delegation welcomed the Commission's efforts to analyse the problems arising from technical development and suggest innovative legal solutions. While it was wise to pay particular attention to activities of other international organizations along the same lines, like the European Community, the Economic Commission for Europe and the International Chamber of Commerce, to avoid any risk of incompatibility, UNCITRAL was called upon to play a pivotal role in the elaboration of relevant rules of a universal nature.

26. His delegation followed with the greatest interest the elaboration of the uniform law on guarantees and stand-by letters of credit, since such a law could serve to improve the legal infrastructure of international trade. It also hoped that the Working Group on International Contract Practices would be able to

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(Mr. Haffner, Austria)

speed up its work so as to complete it before the Commission's twenty-eighth session, in 1995.

27. The system of collecting and disseminating information on court decisions and arbitral awards relating to conventions and model rules resulting from the work of the Commission, which had been established by the Secretariat and had the benefit of a system of mutual exchange of such information, was of great importance in his delegation's view. In the absence of central judicial authorities, only such a procedure could ensure a uniform interpretation of legal instruments and prevent divergencies in their implementation, which would certainly be detrimental to international commerce because of the unpredictability of court decisions and arbitral awards. The system contributed to a better understanding of legal instruments by practitioners, facilitated access to information relating to those instruments and thus corresponded to the spirit of universality which guided UNCITRAL's work.

28. His delegation also welcomed the great number of national seminars held in developing countries and in countries in transition with the assistance of the Secretariat, since such activity reflected that same universality and the general desire to get better acquainted with the legal results of the instruments developed by the Commission.

29. Referring to the report of the Secretary-General (A/48/296) on the implementation of General Assembly resolution 47/34, paragraphs 12 and 13, regarding the granting of travel assistance to representatives of developing countries, his delegation deplored the continuing low rate of participation by representatives of developing countries in the Commission's work. Although it took note of the Commission's finding that consecutive meetings would not alleviate the situation, he hoped that other ways could be found to enable the representatives of such countries to attend the meetings of various working groups more frequently.

30. Mr. DASTIS (Spain) welcomed the Commission's adoption of the draft Model Law on Procurement of Goods and Construction, which would help open up an extremely important economic sector to international trade. He also had high hopes for the draft Guide to Enactment, which should help national parliaments to draw up legislation based on it. Given the quality of the Commission's work on the procurement of goods and construction, his delegation hoped that the Working Group on the New International Economic Order would produce a draft law on procurement of services. He did not believe that UNCITRAL's work would conflict with that of GATT, since the latter considered only the question of access to markets and not the form or content of such markets.

31. Responses to the problems arising from electronic data interchange were currently to be found only at the national level. They should therefore be harmonized, and his delegation hoped that the efforts of the Working Group on Electronic Data Interchange to that end would continue.

32. Among the Commission's various activities his delegation attached particular importance to the elaboration of a uniform law on guarantees and stand-by letters of credit. It was therefore concerned at the slow progress of the Working Group on International Contract Practices. It was not enough in

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(Mr. Dastis, Spain)

that respect to increase the frequency and number of the Working Group's meetings; ways of rationalizing its work and giving it a stronger sense of direction should be considered, and at the same time delegations should be persuaded of the need not to stand too rigidly on principle and to accept suggestions for compromise leading to harmonization which all would welcome in the long term. It was more worth while to have a good, harmonized system of guarantees than a proliferation of national laws which were technically perfect but mutually incompatible.

33. With regard to the future programme of work, his delegation hoped that priority could be given to the question of assignment of claims and international aspects of insolvency. In the latter area, the need for harmonization was particularly pressing and the Commission should not be deterred by the relative lack of success of various past attempts, such as that aimed at harmonizing the law on international bankruptcy. His delegation therefore strongly recommended that the Commission's secretariat should undertake an in-depth study on the opportunities and advantages involved in a harmonized system, taking international aspects of insolvency into account.

34. His delegation was convinced that the success of UNCITRAL's work could only be guaranteed by the participation of experts from all the geographic regions and from various legal and economic systems. It therefore hoped that a solution would be found to the problems of participation in the Commission's work by the least developed countries.

35. Mr. LEGAL (France) considered that the report of the Commission's twenty-sixth session showed a positive result. Thus the adoption of the draft Model Law on Procurement of Goods and Construction had marked the successful conclusion of the cycle of work undertaken by the Working Group on the New International Economic Order. The draft undoubtedly met the needs arising from the growing internationalization of economies. It would render more open the procedures for procurement of goods and would thus enable more equitable treatment to be given to suppliers and contractors. It would complement the measures adopted in more restricted areas, such as the EEC, to improve conditions for competition between suppliers. The text, which was balanced and moderate, raised hopes that many countries would take advantage of it. The adoption of the draft Guide to Enactment might also contribute to that end. His country therefore looked forward with confidence to the work which the Working Group would devote to the problem of procurement of services.

36. The draft uniform law on guarantees and stand-by letters of credit, on which the Working Group on International Contract Practices had been engaged since 1989, should be presented as soon as possible. It would help to harmonize the payment mechanisms on which a large number of transactions depended and to strengthen the confidence necessary for growth in the flow of trade. The Commission had also asked the Working Group to look into ways of completing its task more quickly. France hoped that the draft would be presented at the twenty-seventh session. The Working Group could thus pass on to a new subject.

37. With regard to the future programme of work, he noted that numerous subjects had been proposed. His country would in principle support the idea that the Commission should tackle the problem of mobilization of claims, a study

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(Mr. Legal, France)

of which would be undertaken by the Working Group on International Contract Practices. His country could not, however, accept the creation of a new working group. On the other hand, it welcomed the fact that various regional and national seminars had been held, contributing to the dissemination of knowledge regarding international trade law.

38. Mr. WOOD (United Kingdom) congratulated UNCITRAL on the completion of its work on the Model Law on Procurement and the Guide to Enactment. He was also pleased to note the establishment of a system for collecting and disseminating information on judicial decisions relating to UNCITRAL texts.

39. The United Kingdom agreed that the Commission should start work on the drafting of model provisions on the procurement of services. However it hoped that the work would be carried out in such a way that the Commission could complete its consideration of procurement issues in 1994.

40. During its two sessions, the Working Group on Electronic Data Interchange had made satisfactory progress in identifying areas which might be covered by uniform rules. However, progress had been too slow where guarantees and stand-by letters of credit were concerned. Admittedly it was a complex subject, but the Working Group should complete its examination before the twenty-eighth session of the Commission in 1995. The United Kingdom also congratulated the Secretariat on its swift follow-up to the proposals submitted in 1992 at the UNCITRAL Congress. He hoped that detailed guidelines for pre-hearing conferences in arbitral proceedings would be presented to the Commission at its next session.

41. Referring to document A/48/296 in which the Secretary-General reported on the implementation of paragraphs 12 and 13 of General Assembly resolution 47/34 on the granting of travel assistance to members who were representatives of the developing countries, he noted that representation from those countries remained very low, which was a matter of some concern. UNCITRAL had once again considered rationalizing its work, but the matter was still before the Fifth Committee. He hoped that the latter would conclude its consideration of the issue as soon as possible.

42. Mr. CALERO RODRIGUES (Brazil) said that the report before the Committee proved that UNCITRAL remained one of the most efficient bodies in the United Nations. The highly complex draft Model Law on Procurement was the result of endless hours of debate, research and reflection on the various legal aspects of the subject. It must be said that UNCITRAL could rely on the tireless efforts of its secretariat, which was also responsible for drafting the very valuable Guide to Enactment of the Model Law. Both texts would undoubtedly assist the developed and developing countries to enhance their regulations relating to procurement, thereby contributing to the development of harmonious international economic relations.

43. The Brazilian delegation welcomed the plans to draft model statutory provisions along similar lines on the procurement of services. However the Working Group dealing with the issue should ensure that those provisions were compatible with work being done by GATT on procurement matters.

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(Mr. Calero Rodrigues, Brazil)

44. UNCITRAL also dealt with the legal aspects of electronic data interchange. Brazil hoped that the Working Group on that subject would continue its examination and prepare a text without further delay. A standard agreement on interchange along those lines would serve as a model of universal application pending the preparation of model agreements by bodies such as the European Community and the United Nations Economic Commission for Europe. Likewise, the Brazilian delegation greatly appreciated the progress made by the Working Group on International Contract Practices on the draft Convention on International Guaranty Letters. A uniform law on the subject would certainly be a most useful legal instrument.

45. The UNCITRAL secretariat was to be commended on having developed a system for collecting case law on UNCITRAL texts - an initiative which would greatly assist legal experts and all those interested in international trade law.

46. The Brazilian delegation had followed closely the discussions at the UNCITRAL Congress in May 1992 on harmonizing international trade law by the twenty-first century. It looked forward to the publication of the proceedings of the Congress, which would be a valuable tool for the uniform interpretation of texts emanating from the Commission. His delegation had also welcomed discussions at the Congress on the preparation of guidelines for pre-hearing conferences in arbitral proceedings and aspects of transnational insolvency.

47. Mr. Neuhaus (Australia), Vice-Chairman, took the Chair.

48. Mr. NIELSEN (Denmark) congratulated UNCITRAL on having completed its drafting of the Model Law on Procurement. If the text were to gain wide currency throughout the world, it could make a strong contribution to economic development in so far as its provisions provided the security necessary for maximizing efficiency in procurement.

49. UNCITRAL should continue its efforts in the area of electronic data interchange, since an international system in that important field would benefit all concerned. The same applied to the draft Convention on International Guaranty Letters. While it was a difficult area, a common system based on uniform rules would certainly facilitate international trade and payments. The compilation of case law on UNCITRAL texts was a commendable project which deserved recognition, since it was in keeping with the legal unity already attained through the adoption of universal texts such as the Convention on Contracts for the International Sale of Goods.

50. Commenting on the UNCITRAL programme of work, he said that Denmark had noted that the assignment of claims, security interests and problems in connection with transnational insolvency aspects had been mentioned. While those were very important matters, the former had been the subject of extensive debate in other forums, for instance UNIDROIT. These were major discrepancies among the different legal systems, making it even more difficult to achieve their harmonization.

AGENDA ITEM 142: UNITED NATIONS DECADE OF INTERNATIONAL LAW

51. The CHAIRMAN recalled that the Committee was to elect the Chairman of the Working Group mentioned in paragraph 1 of General Assembly resolution 47/32. He understood that the candidature of Mr. Sani Mohammed (Nigeria) had been proposed.

52. In the absence of any other proposals, he took it that the Sixth Committee elected Mr. Sani Mohammed as Chairman of the Working Group on the United Nations Decade of International Law for the current session.

53. It was so decided.

ORGANIZATION OF WORK (continued) (A/C.6/48/L.1)

54. The CHAIRMAN, referring to paragraph 6 of the note from the Secretariat (A/C.6/48/L.1) concerning the organization of the work of the Committee, invited members to approve the timetable set out in paragraph 6 of the document.

55. Following remarks by Mr. STRAUSS (Canada), who wished to know in advance the timetable for meetings of the Working Groups of the Committee, the CHAIRMAN said that the decision taken on the timetable would be subject to possible modifications by the Bureau at a subsequent meeting.

56. It was so decided.

The meeting rose at 4.45 p.m.